

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson

Plaintiff,

v.

Hon Management, Inc., a
California Corporation;
Allfo One Korea, LLC, a California
Limited Liability Company
Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Hon Management, Inc., a California Corporation; Allfo One Korea, LLC, a California Limited Liability Company; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

1 2. Defendant Hon Management, Inc. owned the real property located at
2 or about 595 E El Camino Real, Sunnyvale, California, between October
3 2020 and February 2021.

4 3. Defendant Hon Management, Inc. owns the real property located at or
5 about 595 E El Camino Real, Sunnyvale, California, currently.

6 4. Defendant Allfo One Korea, LLC owned 10 Butchers Korean BBQ
7 located at or about 595 E El Camino Real, Sunnyvale, California, between
8 October 2020 and February 2021.

9 5. Defendant Allfo One Korea, LLC owns 10 Butchers Korean BBQ
10 (“Restaurant”) located at or about 595 E El Camino Real, Sunnyvale,
11 California, currently.

12 6. Plaintiff does not know the true names of Defendants, their business
13 capacities, their ownership connection to the property and business, or their
14 relative responsibilities in causing the access violations herein complained of,
15 and alleges a joint venture and common enterprise by all such Defendants.
16 Plaintiff is informed and believes that each of the Defendants herein is
17 responsible in some capacity for the events herein alleged, or is a necessary
18 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
19 the true names, capacities, connections, and responsibilities of the
20 Defendants are ascertained.

21
22 **JURISDICTION & VENUE:**

23 7. The Court has subject matter jurisdiction over the action pursuant to
24 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
25 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

26 8. Pursuant to supplemental jurisdiction, an attendant and related cause
27 of action, arising from the same nucleus of operative facts and arising out of
28 the same transactions, is also brought under California’s Unruh Civil Rights

1 Act, which act expressly incorporates the Americans with Disabilities Act.

2 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
3 founded on the fact that the real property which is the subject of this action is
4 located in this district and that Plaintiff's cause of action arose in this district.

5
6 **FACTUAL ALLEGATIONS:**

7 10. Plaintiff went to the Restaurant in October 2020 with the intention to
8 avail himself of its goods or services motivated in part to determine if the
9 defendants comply with the disability access laws. Not only did Plaintiff
10 personally encounter the unlawful barriers in October 2020, but he wanted
11 to return and patronize the business several times but was specifically
12 deterred due to his actual personal knowledge of the barriers gleaned from
13 his encounter with them.

14 11. The Restaurant is a facility open to the public, a place of public
15 accommodation, and a business establishment.

16 12. Unfortunately, on the date of the plaintiff's visit, the defendants failed
17 to provide wheelchair accessible dining surfaces in conformance with the
18 ADA Standards as it relates to wheelchair users like the plaintiff.

19 13. The Restaurant provides dining surfaces to its customers but fails to
20 provide wheelchair accessible dining surfaces.

21 14. One problem that plaintiff encountered is the lack of sufficient knee or
22 toe clearance under the outside dining surfaces for wheelchair users.

23 15. Plaintiff believes that there are other features of the dining surfaces
24 that likely fail to comply with the ADA Standards and seeks to have fully
25 compliant dining surfaces available for wheelchair users.

26 16. On information and belief the defendants currently fail to provide
27 wheelchair accessible dining surfaces.

28 17. These barriers relate to and impact the plaintiff's disability. Plaintiff

1 personally encountered these barriers.

2 18. Even though the plaintiff did not encounter the barrier, defendants
3 place dining tables in front of and on the parking space marked and reserved
4 for persons with disabilities.

5 19. As a wheelchair user, the plaintiff benefits from and is entitled to use
6 wheelchair accessible facilities. By failing to provide accessible facilities, the
7 defendants denied the plaintiff full and equal access.

8 20. The failure to provide accessible facilities created difficulty and
9 discomfort for the Plaintiff.

10 21. The defendants have failed to maintain in working and useable
11 conditions those features required to provide ready access to persons with
12 disabilities.

13 22. The barriers identified above are easily removed without much
14 difficulty or expense. They are the types of barriers identified by the
15 Department of Justice as presumably readily achievable to remove and, in
16 fact, these barriers are readily achievable to remove. Moreover, there are
17 numerous alternative accommodations that could be made to provide a
18 greater level of access if complete removal were not achievable.

19 23. Plaintiff will return to the Restaurant to avail himself of its goods or
20 services and to determine compliance with the disability access laws once it
21 is represented to him that the Restaurant and its facilities are accessible.
22 Plaintiff is currently deterred from doing so because of his knowledge of the
23 existing barriers and his uncertainty about the existence of yet other barriers
24 on the site. If the barriers are not removed, the plaintiff will face unlawful and
25 discriminatory barriers again.

26 24. Given the obvious and blatant nature of the barriers and violations
27 alleged herein, the plaintiff alleges, on information and belief, that there are
28 other violations and barriers on the site that relate to his disability. Plaintiff

1 will amend the complaint, to provide proper notice regarding the scope of this
 2 lawsuit, once he conducts a site inspection. However, please be on notice that
 3 the plaintiff seeks to have all barriers related to his disability remedied. See
 4 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 5 encounters one barrier at a site, he can sue to have all barriers that relate to
 6 his disability removed regardless of whether he personally encountered
 7 them).

8
 9 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 10 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 11 Defendants.) (42 U.S.C. section 12101, et seq.)

12 25. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 13 again herein, the allegations contained in all prior paragraphs of this
 14 complaint.

15 26. Under the ADA, it is an act of discrimination to fail to ensure that the
 16 privileges, advantages, accommodations, facilities, goods and services of any
 17 place of public accommodation is offered on a full and equal basis by anyone
 18 who owns, leases, or operates a place of public accommodation. See 42
 19 U.S.C. § 12182(a). Discrimination is defined, inter alia, as follows:

- 20 a. A failure to make reasonable modifications in policies, practices,
 21 or procedures, when such modifications are necessary to afford
 22 goods, services, facilities, privileges, advantages, or
 23 accommodations to individuals with disabilities, unless the
 24 accommodation would work a fundamental alteration of those
 25 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 26 b. A failure to remove architectural barriers where such removal is
 27 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 28 defined by reference to the ADA Standards.

1 c. A failure to make alterations in such a manner that, to the
 2 maximum extent feasible, the altered portions of the facility are
 3 readily accessible to and usable by individuals with disabilities,
 4 including individuals who use wheelchairs or to ensure that, to
 5 the maximum extent feasible, the path of travel to the altered
 6 area and the bathrooms, telephones, and drinking fountains
 7 serving the altered area, are readily accessible to and usable by
 8 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

9 27. When a business provides facilities such as dining surfaces, it must
 10 provide accessible dining surfaces.

11 28. Here, accessible dining surfaces have not been provided in
 12 conformance with the ADA Standards.

13 29. When a business provides parking for its customers, it must provide
 14 accessible parking.

15 30. Here, accessible parking has not been provided in conformance with
 16 the ADA Standards.

17 31. The Safe Harbor provisions of the 2010 Standards are not applicable
 18 here because the conditions challenged in this lawsuit do not comply with the
 19 1991 Standards.

20 32. A public accommodation must maintain in operable working condition
 21 those features of its facilities and equipment that are required to be readily
 22 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

23 33. Here, the failure to ensure that the accessible facilities were available
 24 and ready to be used by the plaintiff is a violation of the law.

25
 26 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
 27 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
 28 Code § 51-53.)

1 34. Plaintiff repleads and incorporates by reference, as if fully set forth
2 again herein, the allegations contained in all prior paragraphs of this
3 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
4 that persons with disabilities are entitled to full and equal accommodations,
5 advantages, facilities, privileges, or services in all business establishment of
6 every kind whatsoever within the jurisdiction of the State of California. Cal.
7 Civ. Code §51(b).

8 35. The Unruh Act provides that a violation of the ADA is a violation of the
9 Unruh Act. Cal. Civ. Code, § 51(f).

10 36. Defendants’ acts and omissions, as herein alleged, have violated the
11 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of,
12 Plaintiff’s rights to full and equal use of the accommodations, advantages,
13 facilities, privileges, or services offered.

14 37. Because the violation of the Unruh Civil Rights Act resulted in
15 difficulty, discomfort or embarrassment for the plaintiff, the defendants are
16 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
17 55.56(a)-(c).)

18 38. Although the plaintiff encountered frustration and difficulty by facing
19 discriminatory barriers, even manifesting itself with minor and fleeting
20 physical symptoms, the plaintiff does not value this very modest physical
21 personal injury greater than the amount of the statutory damages.
22

23 **PRAYER:**

24 Wherefore, Plaintiff prays that this Court award damages and provide
25 relief as follows:

26 1. For injunctive relief, compelling Defendants to comply with the
27 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
28

1 plaintiff is not invoking section 55 of the California Civil Code and is not
2 seeking injunctive relief under the Disabled Persons Act at all.

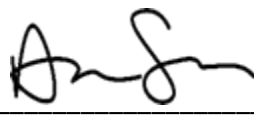
3 2. For equitable nominal damages for violation of the ADA. See
4 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
5 and any other equitable relief the Court sees fit to grant.

6 3. Damages under the Unruh Civil Rights Act, which provides for actual
7 damages and a statutory minimum of \$4,000 for each offense.

8 4. Reasonable attorney fees, litigation expenses and costs of suit,
9 pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

10
11 Dated: March 22, 2021

CENTER FOR DISABILITY ACCESS

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13 By: 
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15 Amanda Seabock, Esq.
16 Attorney for plaintiff
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